IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 77 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI SHANTILAL SONI

Versus

YOGNEDRA DAHYALAL PANDYA

Appearance:

MR KB PUJARA for Petitioners

NOTICE SERVED for Respondent No. 1

MR SUDHANSHU PATEL, AGP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/08/2000

ORAL JUDGEMENT

This Criminal Revision Application has been filed by the petitioners for quashing and setting aside an order dated 1-11-1991 passed by the learned Civil Judge

(Sr.Divn.), Himmatnagar, upon Application Ex.17 whereby the learned Judge has directed the C.O.C., Civil Court (Sr.Divn.), Himmatnagar, to lodge a complaint under Sec.186 read with Sec.114 of the Indian Penal Code against the present petitioners-original defendant Nos.4 and 7.

2. The present petitioners were the original defendant Nos.4 and 7 in the Civil Suit No.171/1991 which had been filed by the present respondents in the Court of learned Civil Judge (Sr.Divn.) at Himmatnagar stating that the petitioners and respondents are members of the Indian Red Cross Society, Dist. Sabarkantha, Branch Himmatnagar wherein date of annual election was declared by the District Collector, Sabarkantha, an ex-officio President of the Society. It was stated in the said suit that present petitioner No.1 and respondent No.2 filed nominations for the post of Honorary Secretary whereas present respondent No.1 filed nomination for the post of Second Vice President. Ultimately, present petitioner No.1 was declared as Honorary secretary and one Shri R.N.Shankla as the Second Vice President and, therefore, present respondent Nos.1 and 2 filed aforesaid regular Civil Suit No.171 of 1991 in the Court of learned Civil Judge (Sr.Divn.), Himmatnagar for a declaration that the proceedings of election and/or selection of the candidate be declared as illegal and bad in law. They also took out injunction application Ex.5 praying for interim injunction against the defendants from taking charge of the society.

2.1 The learned Civil Judge (Sr.Divn.) after going through the injunction application and the documentary evidence, which were produced before him, granted ex-parte ad-interim injunction directing the defendant Nos.3 to 14 to maintain status quo as on 5-8-1991 till 7-8-1991 and returnable date was fixed to be 7-8-1991. The process of above proceedings was served upon the respondents on 5-8-1991 in the evening during office hours. However, the petitioner Nos.1 and 2 could be served later on on the same day. Thereafter, while obtaining the suit process, petitioner Nos.1 and 2 made endorsement upon the process i.e. summons, to the effect that charge of the post was handed over and it was taken over by the petitioners on 5-8-1991 at 4.15 p.m.

2.2 The defendants filed purshis Ex.13 in the Court stating that the new office bearers had already taken charge of their office between 3.30 p.m. and 4.15 p.m. on 5-8-1991. The defendants also produced the charge report with the purshis and in view of the above fact,

the Court did not extend the interim relief though it was requested by the plaintiffs by way of application Ex.15 on the ground that it became infructuous. Therefore, the plaintiffs made allegation and, therefore, the Court called upon the concerned Bailiff and recorded his statement at Ex.16.

2.3 The plaintiff submitted an application Ex.17 for taking criminal action against the present petitioners i.e. the defendant Nos.4 and 7. Said application was fixed for reply and hearing and ultimately, after hearing the learned advocates appearing for the respective parties and after going through the affidavits Exs.30, 31 and 32, learned Civil Judge (Sr.Divn.) passed an order upon Application Ex.17 on 1-11-1991 directing the C.O.C. to lodge the complaint under Sec.186 read with Sec.114 of the Indian Penal Code against the present petitioners-defendant Nos.4 and 7. Against that order, present Criminal Revision Application has been preferred by the present petitioners.

3. Initially, rule was issued which was made returnable on 17-12-1991 and interim relief was also granted in favour of the present petitioners. Though it was duly served upon the present respondents i.e. present plaintiffs Nos.1 and 2, they have chosen not to appear either personally or through their advocate. State has been represented by learned Addl. Public Prosecutor, Mr.Sudhanshu Patel.

4. I have heard Mr.K.B.Pujara, learned advocate for the petitioners at length and also Mr.Sudhanshu Patel, learned Addl. Public Prosecutor. I have also gone through the documentary evidence annexed with the petition as well as the reasoned order passed by the learned Civil Judge (Sr.Divn.), Himmatnagar.

5. Taking into consideration all the above aspects of the matter, it is established that at initial stage, Court had passed the order upon injunction application Ex.5 filed by the plaintiffs in Regular Civil Suit No.171 of 1991 granting status quo. It is not in dispute that same has been served upon all the defendants, i.e. including the present petitioners on the same day i.e. on 5-8-1991. But record and proceedings do not show at what point of time Court had passed the order and at what time it was served upon the defendants. It has been prima-facie established from the record and proceedings that at first instance, order granting temporary injunction has been served upon the defendants and summons of suit also which reveals from the specific

endorsement made by the petitioners-defendants upon summons Ex.11 stating that the charge has been handed over by the petitioner No.2 to petitioner No.1 which created hue and cry on the returnable date i.e. 7-8-1991 and the Court did not extend the interim order of status quo on the ground that it became infructuous. It appears that oral submissions on behalf of the plaintiffs took place at the first place, then statement of Bailiff was recorded by the Court at Ex.16 and, thereafter, application Ex.17 was given by the plaintiffs to the Court. Facts remain that at the time of service of summons, defendants have made specific endorsement that the procedure of handing over and taking over of charge was over. If at all defendants have made any endorsement upon the summons Ex.11 afterwards, then Bailiff would have made report to that effect to the Court which would have reflected from the Bailiff report itself as Bailiff is required to make written report on it. But both remained silent. Second aspect is that Bailiff remained silent till 7-8-1991 even after the defendants have submitted the purshis Ex.13 into the Court. It might be possible that when the original plaintiffs have made hue and cry after purshis Ex.13 is filed, it has led the Bailiff to say something in the Court by way of Ex.16. But facts remain that Bailiff has remained silent from 5-8-91 to 7-8-91 and even while passing the impugned order, Court has observed in his order at page No.2 that "I am constrained to observe that, despite that, not leaving the matter for the consideration of the Court, the plaintiffs have filed the present application at 17.00 hours, matter was adjourned till that time." It was further observed at page 4 that "it is somewhat not understandable as how the plaintiffs came to know about the endorsements made by defendants Nos.4 and 7 on summons Ex.11, at the relevant juncture, during the court was passing the order on Ex.15. Then the defendants No.4 and 7 have filed their affidavits (which ought to have been filed on the very day on which the present application was given)." At page No.9 para 8 it was observed that "in my opinion, the endorsement made on Ex.11 by the defts. No.4 & 7 is wholly unwarranted. Then coming to point No.2, it clearly reveals through the statement Ex.16 of Bailiff before the Judge on oath, that while he had proceeded to obtain the signatures of other defts., the deft. No.4 & 7 made an endorsement on Ex.11, inspite of his clear denial (instruction)". Further it was observed that "they should have refrained themselves from making such endorsement, so it reveals that they have voluntarily obstructed the Bailiff in his performing discharging the duty." Therefore, according to him, complaint under Sec.195(1)(a) of Cr.P.C. was required to

be filed against the present petitioners. From the observations of the Court, it reveals that the alleged offence has taken place on 5-8-1991 in presence of several respectable persons. If that is so, then Bailiff would have immediately made a report to that effect. He remained silent till practically the Court hours are over on 7-8-1991 and when such a situation had arisen, he had no other go except to enter into witness box as directed by the Court and, therefore, the direction that has been given by the Court relying only on the version of the Bailiff is highly improper in my opinion. It is true that petitioners are highly qualified medical practitioners. They are not supposed to know the detailed procedures of the Court and, therefore, if they have made any endorsement upon the summons, then the Bailiff would have restrained them from making such endorsement and would have informed the Court by way of endorsement in his report or by way of making a special report to that effect to the Court. In the absence of these, it is a technical mistake of the petitioners-defendants that inspite of making endorsement upon the process of injunction application, they have made the endorsement upon the summons which is a deliberate action on the part of the petitioners. But what they wanted to convey the Court was that when process has been served on them, the whole process of handing over the charge was over and when the Bailiff remained silent till the last, then immediately on relying upon the oral evidence of such person, Court ought not to have jumped to the conclusion as requested by the plaintiffs and not to have directed the order of prosecution against the present petitioners. If the Bailiff tells them to make endorsement on summons, it is not a serious thing which would render them to drag into such criminal proceedings. If at all the endorsement is alleged to have been made by the petitioners upon the summons, then Court would not have accepted their version but ought to have passed mandatory orders directing the defendants to hand over the charge. Mere contention of the plaintiffs that Court ought not to have passed this type of order on the basis of the facts alleged to have been advanced stating the act of the Bailiff to be of creating doubt and hence, they are liable to face trial is not a correct conclusion arrived by the Court below upon Ex.17. Therefore, said order is required to be quashed and set aside.

6. In the result, this Criminal Revision Application is allowed. The impugned order dated 1-11-1991 passed by the learned Civil Judge (Sr.Divn.), Himmatnagar below Ex.17 in Regular Civil Suit No.171 of 1991 is hereby

quashed and set aside. Rule is made absolutely accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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